

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89899

AMERIQUEST MORTGAGE COMPANY

PLAINTIFF-APPELLEE

VS.

ANTOINETTE M. STONE, ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-510794

BEFORE: Calabrese, P.J., Blackmon, J., and Stewart, J.

RELEASED: August 7, 2008

JOURNALIZED:

[Cite as *Ameriquest Mtge. Co. v. Stone*, 2008-Ohio-3984.]

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

ANTHONY O. CALABRESE, JR., P.J.:

{¶1} Defendant Antoinette M. Stone (appellant) appeals the court's granting summary judgment to Ameriquest Mortgage Company in this foreclosure case. After reviewing the facts of the case and pertinent law, we dismiss for lack of a final appealable order.

I.

{¶2} On September 22, 2003, Ameriquest filed a foreclosure complaint against appellant for failure to make timely mortgage payments. On February 15, 2007, a magistrate granted Ameriquest's unopposed summary judgment motion and decree for foreclosure. On April 24, 2007, the trial court summarily adopted the magistrate's decision.

{¶3} Sua sponte, we dismiss the instant appeal for lack of a final appealable order. The trial court merely adopted the magistrate's decision without separately stating its own judgment, in violation of Civ.R. 53(E)(5). See *In re Zinni*, Cuyahoga App. No. 89599, 2008-Ohio-581; *Plymouth Park Tax Servs., LLC, et al., v. Margaret A. Frazier, et al.*, Cuyahoga App. Nos. 90343, 90352, 90353, 90354, 90356, 90357, 90464, 90525, and 90526, 2008-Ohio-3348. "To constitute a final appealable order, a court's entry reflecting action on a magistrate's decision must be a separate and distinct instrument from the decision and must grant relief on the issues originally submitted to the court." *Id.*

Appeal dismissed.

It is ordered that appellee recover from appellants costs herein taxed.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANTHONY O. CALABRESE, JR., PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., CONCURS;
MELODY J. STEWART, J., DISSENTS WITH SEPARATE OPINION

MELODY J. STEWART, J., DISSENTING:

{¶4} I respectfully dissent from the majority's sua sponte dismissal of this appeal on grounds that the court failed to issue a "separate and distinct instrument from the [magistrate's] decision" and that it did not "grant relief on the issues originally submitted to the court." For the same reasons stated in my concurring and dissenting opinion in *Plymouth Park Tax Svcs. v. Frazier*, Cuyahoga App. No. 90343, et al., motion no. 410459, I find that the court's order satisfied its requirements for adopting a magistrate's decision.

{¶5} Civ.R. 53(D)(4)(e) states that "[a] court that adopts *** a magistrate's decision shall also enter a judgment or interim order." The court's order overruling objections to the magistrate's decision stated:

{¶6} “The objections to the magistrate’s decision are overruled. The Court adopts the magistrate’s decision attached hereto and incorporated herein. *Decree of foreclosure for Plaintiff*. Pursuant to Civ.R. 54(B) the Court finds there is no just reason for delay.” (Emphasis added.)

{¶7} Ameriquest styled its complaint as a “Complaint in Foreclosure.” By granting a “decree of foreclosure” the court granted relief on the issues originally submitted to it as required by Civ.R. 53(D)(4)(e). Moreover, by adopting the magistrate’s reasoning and journalizing the magistrate’s decision as part of its own foreclosure decree as allowed by Civ.R. 53(D)(4)(b) [“a court may adopt or reject a magistrate’s decision in whole or in part, with or without modification”], the court set forth its reasons in support of the decree of foreclosure. Hence, the court did not “summarily adopt” the magistrate’s decision, but in fact fully satisfied the requirements cited by the majority. I therefore conclude that this order is final and appealable in all respects, and would hear the appeal on the merits.